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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,105	08/17/2006	Werner Seiler	2774.002	1070
23405 7590 02/28/2011 HESLIN ROTHENBERG FARLEY & MESTI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1789				
MAIL DATE		DELIVERY MODE		
02/28/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/598,105

Applicant(s)

SEILER, WERNER

Examiner

Lien T. Tran

Art Unit

1789

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 37-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 37-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The 112 second paragraph rejection of all claims is hereby withdrawn due to the amendment filed on 12/16/10.

Claims 1, 3-4, 7-13,37-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scharschmidt (3615677) in view of Lechthaler et al (5840359) and Wang et al (5989620)

Scharschmidt discloses a process of making high protein pasta products. The process comprises the steps of forming a raw dry mixture of 45-85% corn flour, 15-40% soy flour and 0-30% wheat flour, metering water into the mixture to form a dough, extruding the dough into the desired form and drying the shaped paste product to a final moisture content of less than about 12%. The process comprises the step of partially gelatinizing the starch during extrusion or after extrusion or prior to extrusion. The gelatinization can be effected during the extrusion by jacketed heating equipment, such as steam; live steam can be sparged directly into the dough during extrusion. The total moisture of the composition being extruded is about 25-50%. Additional additives such as hydrophillic colloids , egg, protein, etc.. can be added to the dough. (see col. 1 lines 60-75, col. 2-4, col. 5 lines 5-15 and the examples)

Scharschmidt does not disclose the temperature of the water and vapor, the ratio of water to vapor, the vapor exposure time, the adding of monoglyceride, diglyceride or hardened fat , the pressure as claimed , making fresh pasta and the extruder is a two-screw extruder.

Lechthaler et al disclose a process of making pasta. The process uses a twin screw extruder. (see col. 4 lines 38-65)

Wang et al disclose a process of making legume pasta; the apparatus used includes a twin screw extruder.

Parameters such as water temperature, vapor temperature, time and pressure are effective-result variable which can readily be determined by one skilled in the art to obtain the most optimum product. It would have been obvious to one skilled in the art to determine the temperature for optimum mixing and gelatinization. The degree of gelatinization of the starch in the Scharschmidt product falls within the range claimed for the product; thus, it is expected the steam temperature and exposure time are similar to the ones claimed. It would have been obvious to one skilled in the art to determine the proper water to vapor ratio to obtain the desired consistency and gelatinization. Such parameter can be determined by one skilled in the art through routine experimentation. It would have been obvious to add emulsifier such as monoglyceride to improve the texture and flavor of the pasta. Emulsifier is well known for such purpose. Adding an additive for its art-recognized function would have been obvious to one skilled in the art. It would have been obvious to omit the drying step when desiring to make fresh pasta. Scharschmidt teaches to use an extruder to make the pasta; it would have been obvious to use a twin screw extruder for the process because it is a typical apparatus to use for pasta production as shown by Lechthaler et al and Wang et al.

Claims 5-6 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scharschmidt in view of Tong et al (GB1097795).

The teaching of Scharschmidt is described above. Scharschmidt does not teach the use of a conveyor belt to move the material and for steaming treatment.

Tong et al disclose a process of making gluten-free pasta out of rice flour. The process comprises the steps of generating a mixture of rice flour, mixing the rice flour with water to form a moisten mixture, passing the mixture into a premixer to form into granules, conveying the granules to a steaming chamber, conveying the steamed granules into an extruder, forming pasta strand, conveying the strands to a second steaming chamber and then drying the strands (see page 1).

The use of conveyor belt to move material and the use of placing vapor or steam treatment on conveyor belt are known in the art as shown by Tong et al. It would have been obvious to one skilled in the art to use the Tong et al system as an alternative known method for conveying and processing material. Using an alternative known method to carry out the same function would have been an obvious matter of choice.

In the response filed 12/16/10, applicant argues about the new limitation of the "two-screw mixer " now in claims 1 and 37. The new limitation is addressed in the rejection above. Applicant comments on the unexpected result of using a two-screw mixer; a twin screw extruder is a common apparatus for the production of pasta as shown by the references in the rejection.

Applicant's arguments filed 12/16/10 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 24, 2011

/Lien T Tran/

Primary Examiner, Art Unit 1789